IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 21456 of 2004

Between:

T. Papa Rao, S/o. Bhaskara Rao,
D.No.70-15-34/1, Suresh Nagar Kakinada,
East Godavari District.

... PETITIONER

AND

1 The Commissioner for Prohibition and Excise,

Government of Andhra Pradesh, Nampally, Hyderabad.
2 The Deputy Commissioner for Prohibition and Excise,

Kakinada.
3 The Prohibition and Excise Superintendent, Kakinada,

East Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Mandamus or any other appropriate writ or direction declaring the proceedings of the 1st respondent issued in CR.NO.18850/04/CPE/G3 dated 5-11-2004 in not returning the licence fee deposited for the period form 1-8-2004 to 30-9-2004 during which period the petitioner did not conduct the business as illegal, arbitrary and consequently direct the respondents to return the licence fee of Rs.1,75,730/- to the petitioner forthwith

Counsel for the Petitioner:MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following :

-

-

O R D E R:

The petitioner was granted a licence in Form IL-17, for establishing a bar and restaurant at Rajahmundry, up to 31.07.2004. The bar was established in a leased premises. Since there was uncertainty as to the extension of the lease, the petitioner did not make any application for renewal of the licence, before the expiry of the period. However, to avail the benefit of a policy decision of the Government to extend the lease by two months, he made an application on 2.08.2004, seeking renewal of the licence by two months, up to 30.09.2004. He also paid a sum of Rs.1,76,730/- towards the proportionate licence fee. According to the petitioner, the owner of the premises did not agree for renewal of the lease, and in that view of the mater, he submitted an application to the respondent to refund the licence fee. The application was rejected by the first respondent, through his proceedings dated 5.11.2004. The same is challenged in this writ petition.

Heard learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise.

It is not in dispute that the petitioner deposited a sum of Rs.1,76,730/- towards proportionate licence fee, for renewal of the licence by two months, and that the respondents did not renew the licence on the ground that the petitioner did not file the consent letter of the owner of the premises. It is not even alleged that the petitioner conducted business even for a day beyond 31.07.2004. That being the case, the petitioner is entitled for refund of the licence fee. The observation made by the first respondent that there is a loss of one month licence fee to the Government cannot be sustained. It is not as if the department had identified the bar and restaurants at individual places, on par with Fair Price Shops, and that on account of failure on the part of the petitioner to run the bar for a particular period, the Government sustained loss. The stand taken by the first respondent in refusing to refund the amount does not conform to the provisions of the Act or general principles of law.

For the foregoing reasons, the writ petition is allowed, and the respondents

are directed to refund the licence fee paid by the petitioner, within a period of two months, from the date of receipt of a copy of this order. There shall be no order as to costs.

_____

2nd February, 2005

pan

To

1 The Commissioner for Prohibition and Excise,

Government of Andhra Pradesh, Nampally, Hyderabad.

2 The Deputy Commissioner for Prohibition and Excise,

Kakinada, East Godavari District.

3 The Prohibition and Excise Superintendent, Kakinada,

East Godavari District.

4 Two C.Cs. to the Government Pleader for Proh.& Excise,

High Court buildings, Hyderabad (OUT)

5 Two C.D.copies